

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT COURT OF OHIO
EASTERN DIVISION

LUCY McKERNAN)	CASE NO: 1:20 CV 00032
)	
Plaintiff,)	JUDGE PAMELA A. BARKER
)	
v.)	
)	
CITY OF SEVEN HILLS, et al.)	<u>AMENDED COMPLAINT</u>
)	
Defendants.)	
)	
and)	
)	
STATE OF OHIO)	
c/o The Attorney General of the)	
State of Ohio)	
30 East Broad Street, 14 th Floor)	
Columbus, Ohio 43215)	
)	
New-Party Defendant)	

Now comes Plaintiff Lucy McKernan, by and through attorney Gary H. Levine and hereby submits her Amended Complaint in the within matter as follows:

INTRODUCTION

This is an action initiated by a United States citizen who resides in the City of Seven Hills, Ohio who was arrested by police officers of the City of Seven Hills, Ohio and charged with a violation of Ohio Revised Code § 1533.031 (Prevention of hunting by creating noise prohibited). Plaintiff entered a No Contest Plea in the Parma Municipal Court without a consent to a finding of guilt on January 28, 2018. The resulting conviction was reversed by the Eighth

District of Ohio Court of Appeals. The Plaintiff had moved that the charges should be dismissed based upon the unconstitutionality of the Ohio Statute.

In her appeal to the Eighth District Court of Appeals, Plaintiff argued that the subject Statute was unconstitutional as it was vague and overbroad and violated her right to Free Speech. Although the Court of Appeals reversed the conviction, it expressly declined to address the issue raised concerning the unconstitutionality of the statute.

Thus, this claim is not based on *res judicata*.

Defendant State of Ohio, by and through its Legislative Branch enacts various statutes that are duly enforced through various executive and police agencies, including those operated by the Defendant City of Seven Hills. Police departments throughout the State of Ohio are duly licensed and operate pursuant Ohio Statutes and Regulations.

In the course of the State's legislative activities and related obligations it has promulgated Ohio Revised Code § 1533.031 (Prevention of Hunting by creating Noise Prohibited).

COUNT ONE

1. Plaintiff is a resident of the City of Seven Hills, Ohio.
2. Defendant City of Seven Hills is organized under the Laws of the State of Ohio as a chartered municipal corporation and is a governmental entity that has enacted various ordinances including that is identical to Ohio Revised Code § 1533.031 (Prevention of Hunting by Creating Noise).
3. On November 22, 2017 Plaintiff was arrested by Seven Hills Police Officer and charged with two (2) violations of the aforesaid statute.
4. Plaintiff was taken into custody and required to post bond, retain counsel and appear in the Parma Municipal Court to defend against the charges.

5. Subsequently, Plaintiff entered a No Contest Plea without an admission of guilt and was sentenced by the Court.

6. Plaintiff through counsel appealed the conviction to the Eighth District Court of Appeals of the State of Ohio which reversed the conviction without addressing the alleged unconstitutionality of the statute.

7. Plaintiff alleges that the Ohio statute enacted for the stated purpose of protecting hunters engaged in recreational activity is unconstitutional in that it is vague and overbroad because it permits punishment of speech protected by the First Amendment to the United States and Ohio Constitution.

8. Plaintiff has sustained damages as she was arrested and punished for exercising her First Amendment Right guaranteed by the Ohio Constitution.

9. Plaintiff alleges and avers that not only she but all citizens for the State of Ohio are faced with a choice between engaging in constitutionally protected speech or facing the possibility of arrest and prosecution.

10. Defendant City of Seven Hills, by and through its Law Director and City Counsel introduced, enacted and enforced the aforementioned statute and local ordinance through its Law Enforcement procedure and are therefore the proximate cause of the violations of Plaintiff's Constitutional Rights and the damages that she has sustained and expenses incurred.

COUNT II

11. Plaintiff reasserts the foregoing allegations and incorporate them by reference as if fully set forth herein.

12. As a result of the acts and conduct of the Defendants, Plaintiff and other citizens of the State of Ohio have and will suffer injury in that the enforcement of the subject statute and ordinance will be denied their Constitutional Right to Free Speech.

13. Plaintiff has no adequate remedy at law and, unless the subject statute is declared unconstitutional the Plaintiff and the citizens of the State of Ohio will suffer irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lucy McKernan urges this Court to grant the following relief:

A) Declare that Ohio Revised Code § 1533.031 and corresponding municipal ordinances are unconstitutional as overbroad and violate Plaintiff's and other citizens right to their First Amendment Rights to Free Speech.

B) Enjoin Defendants from enforcing statutes and corresponding ordinances during the pendency of this litigation and permanently enjoin the Defendants upon its conclusion. Grant a permanent injunction enforcing the Defendant City of Seven Hills including its police department personnel from enforcing said statute and ordinance.

C) Order Defendant City of Seven Hills to pay Plaintiff appropriate compensatory and punitive damages and seek other relief as this Court may determine are appropriate.

Respectfully submitted,

/s/ Gary H. Levine

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